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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 1092 101

KEESHIN MOTOR EXPRESS CO., INC.,
A CORPORATION,
Petitioner,

vs.

INTERSTATE COMMERCE COMMISSION,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

LUTHER M. WALTER,
HELEN W. MUNSERT,
2106 Field Building,
Chicago, Illinois,
ZACHARY D. FORD, JR.,
FLOYD F. SHIELDS,
221 West Roosevelt Road,
Chicago, Illinois,
Attorneys for Petitioner.

THE BUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Keeshin Motor Express Co., Inc., an Illinois corporation, respectfully prays that a Writ of Certiorari issue to review the decision of the United States Circuit Court of Appeals for the Seventh Circuit in this cause, entered March 15, 1943, affirming an order of the District Court of the United States, Northern District of Illinois, Eastern Division, that confirmed an injunctive decree previously entered by the same court. The decision here requested to be reviewed is reported in 134 F. 2d 228 and is printed in the Transcript of Record, page 73.

Jurisdiction.

The decision of the United States Circuit Court of Appeals for the Seventh Circuit was entered March 15, 1943 (R. 73). The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (United States Code Annotated Title 28, paragraph 347 (a)).

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

(a) Nature of the Proceedings.

The Interstate Commerce Commission on June 25, 1941 filed a Complaint (R. 2) in the District Court below alleging violation by the Petitioner of Sections 217 (b) and 222 (c) of Part II of the Interstate Commerce Act and demanded judgment which would perpetually and permanently enjoin and restrain the Petitioner and its officers, directors, agents, employees, representatives and others from charging, demanding, collecting or receiving a less charge and compensation for the transportation of property for the general public in interstate commerce over its lines and routes and on public highways of the United States, and in particular on public highways between Chicago, Illinois, and East St. Louis, Illinois, via St. Louis, Missouri, than the rates and charges shown in the Petitioner's tariffs duly filed with the Commission. The Complaint also asked that the injunctive decree restrain the Petitioner and its officers, agents, representatives and others from offering, granting or giving concessions in respect to the transportation of property for the general public over its lines and routes and on public highways between Chicago, Illinois and East St. Louis, Illinois, via St. Louis, Missouri, and between points shown in Petitioner's tariffs. An Answer to the Complaint was filed (R. 11).

In the trial of the case all of the facts were submitted by written stipulations between the parties (R. 14 and 48). All of the facts and the evidence that established such facts had to do solely with transportation of property by the Petitioner between Chicago and other points in Illinois,

on the one hand, and East St. Louis, Illinois, on the other hand, through St. Louis, Missouri. No facts pertaining to transportation between points in any state other than the points as indicated in Illinois were established, and, further, no evidence was received or offered pertaining to any transportation between points in any other state.

After the trial court had heard the entire case, including argument of counsel, and had announced its decision to the effect that the prayer of the Commission's Complaint should be allowed and an injunctive decree would issue, the Commission, in an attempt to agree on the form of the judgment entry, proposed that the injunction be made to cover not only transportation between points within the State of Illinois through St. Louis, Missouri, but also transportation between points in *any state* through *any other state*. After further consideration the trial court indicated that on the evidence the Commission was entitled to an injunction in the form and as broad as it was requesting, provided the Complaint was sufficiently broad. The trial court further indicated at the same time that the Complaint as originally filed was not broad enough and stated that leave would be given the Commission, if it so desired, to amend the Complaint. The Complaint was amended (R. 29) and the broad decree as requested by the Commission was entered by the District Court (R. 36), further confirmed by order of the same court (R. 58) and affirmed in all respects by the Circuit Court of Appeals (R. 73).

(b) Statement Concerning Petitioner and Pertinent Provisions of the Act.

Petitioner, Keeshin Motor Express Co., Inc., an Illinois corporation, with its principal and general office at Chicago, Illinois, is a common carrier of property by motor vehicle as defined in Section 203 (a) (14) of Part II of

the Interstate Commerce Act (U. S. Code, Supp. 1, Title 49, Sec. 303 (a) (14)) and as such is required to publish and file with the Interstate Commerce Commission, tariffs showing all the rates and charges in lawful money of the United States for transportation, and all services in connection therewith. (Sec. 217 (a) of the Act, 49 U. S. C. 317(a).)

The Act provides that such carriers cannot deviate from their tariffs as filed and no such carrier shall charge, or demand, or collect, or receive a greater, or less, or different compensation for transportation than the rates and charges specified in the tariffs in effect at the time. (Sec. 217 (b) of the Act, 49 U. S. C. 317 (b).)

The Act provides that if any carrier violates certain of its provisions, including those involved here, the Commission may apply to a proper District Court of the United States for enforcement of such provisions and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction restraining such carrier from further violation. (Sec. 222 (b) of the Act, 49 U. S. C. 322 (b).)

The Act also provides that anyone who shall *knowingly and wilfully* assist, suffer or permit anyone to obtain transportation of property subject to the Act for less than the applicable rate or charge shall be deemed guilty of a misdemeanor and upon conviction subject to a fine. (Sec. 222 (c) of the Act, 49 U. S. C. 322 (c).)

The Petitioner operates in twelve states in the conduct of its business, of which Illinois is one. Rates and charges of such carriers for transportation service in intrastate commerce are regulated and prescribed pursuant to law in some of said states and not in others. The rates and charges of such carriers in intrastate commerce are not so regulated and prescribed in the State of Illinois.

The Question Presented.

The single question presented may be stated as follows:

1. Was the issuance of a permanent injunction, unrestricted in territorial scope applying throughout all twelve states in which the Petitioner operates, justified when the original complaint and all of the evidence of record was limited to instances of transportation between points in only the State of Illinois through St. Louis, Missouri.

A significant aspect of the question, as here stated and presented by the Petitioner, is whether or not the trial court was justified in granting leave to amend the Complaint after indicating what its judgment would be, where no evidence was introduced to justify such amendment.

The petitioner does not here contend that no injunction whatever should issue insofar as the State of Illinois is concerned, particularly in connection with instances of transportation between Chicago and other points in the State of Illinois, on the one hand, and East St. Louis, Illinois, on the other hand, through St. Louis, Missouri.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

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1. The decision of the Circuit Court of Appeals in the instant case is in conflict with principles laid down in other decisions of the same Court and decisions of other Circuit Courts of Appeals and decisions of the Supreme Court of the United States.

In the instant case the territorial scope of the injunctive decree is the essence of the question involved. The lack of any evidence whatsoever pertaining to the activities of the petitioner in eleven of the twelve states involved raises a question that is most pertinent in all injunctive decrees and that is the broadness of their application. Where activities of the petitioner complained of in some segregated part of a broad territory have not been shown to be similar to activities of the petitioner in other parts of the territory, the territorial scope of the application of the decree is encompassed with the question of broadness, particularly where the effect of the decree goes beyond the territory wherein the evidence or actual activities complained of are confined. The principles laid down in the same Circuit Court of Appeals by its decision in the case of *Commonwealth Edison Company* v. *National Labor Relations Board*, Docket No. 8190, decided May 22, 1943, and dealing with the scope and broadness of an order to cease and desist is in conflict with its decision in this case. The *Commonwealth* case is unreported; however, a copy has been filed with the Clerk of the Supreme Court of the United States. It is also in conflict with the decision by the same Court in the case of *National Labor Relations Board* v. *Swift & Co.*, 108 F. (2d) 988, also, the decision of the Circuit Court of Appeals for the Eighth Circuit in *Southern*

Pac. Co. v. *Colorado Fuel & Iron Co., et al.*, 101 Fed. 779, also decisions of the Supreme Court of the United States in *New York, New Haven & Hartford Railroad Company* v. *Interstate Commerce Commission*, 200 U. S. 361, and *National Labor Relations Board* v. *Express Publishing Company*, 312 U. S. 426. All of said decisions deal with the broadness of the application and effect of injunctive decrees.

2. The decision of the Circuit Court of Appeals substitutes penalties for contempt of Court—fine and imprisonment—for the statutory penalty of a fine only throughout a territory comprised of eleven large states of the United States where petitioner operates with no evidence whatsoever as to any violation of the statute and no evidence of activities similar to those complained of in any of said eleven states.

An inadvertent and human error made by any of the many representatives and employees of the petitioner in connection with the petitioner's business and activities in assessing charges on a shipment moving between points in any one of said eleven states through another state would subject the petitioner and such representatives and employees to the fines and penalties of the restraining order. Such fines and penalties could well result from minor and wholly inadvertent departures from tariff provisions in any or all of the states in which petitioner operates where it renders transportation service between points in one state through another state although the evidence of such departures that was used in support of the issuance of the injunctive decree relates solely to a single state.

3. The United States Circuit Court of Appeals for the Seventh Circuit has decided a question of substantive law relating to the construction and application of the rate and tariff regulatory provisions of Part II of the Interstate Commerce Act, which has not been, but should be, settled by this Court.

The proper interpretation of the question is of general importance to all common carriers by motor vehicle, such as the petitioner, and all officers, directors, agents, employees, representatives, and all others acting by or under the direction or authority of such common carriers throughout the United States. The decree does not deal with a violation of the statute in connection with petitioner's right to conduct its business or operate its trucks over certain routes and highways and between certain points but rather with deviations from compilations of rates and charges as set forth and filed in published tariffs as required by statute. Circumstances and conditions that would bring about deviation from such rates and charges might exist in some particular limited place or portion of a broad territory but such circumstances and conditions may not exist in other parts of such broad territory, and, if they did exist, they may not bring about deviation from such rates and charges. There should be a final decision in this case to aid and assist in establishing a controlling principle or policy in the administration of the statute as it pertains to tariff requirements to be complied with by carriers subject to the statute, particularly in connection with the broad application and territorial scope encompassed by injunctive decrees prohibiting deviation from tariff provisions that are not in themselves part of the statute, but are filed, published and given effect pursuant to the statute and administrative rules and regulations thereunder.

The petitioner has abandoned its contention that under

the facts of record no injunction whatever should issue to compel compliance with its published tariffs insofar as the State of Illinois is concerned, particularly between Chicago and other points in the State of Illinois, on the one hand, and East St. Louis, Illinois, on the other hand, through St. Louis, Missouri. Its Petition is directed solely at the breadth and scope of the injunction in a territorial sense. The Interstate Commerce Commission has instituted many proceedings throughout the country to compel compliance with tariffs by injunctive decree rather than to invoke the provisions of the statute for nonobservance of tariffs. The decision in this case is one of not only importance to the petitioner but to the entire common carrier transportation industry insofar as the pertinent rate and tariff provisions of Part II of the Interstate Commerce Act are concerned. According to records of the Interstate Commerce Commission, there are several thousand of such carriers throughout the United States.

WHEREFORE, your petitioner prays that a writ of certiorari be issued out of and under the seal of your Honorable Court directed to the United States Circuit Court of Appeals for the Seventh Circuit commanding that Court to certify and send to this Court for its review on a day certain to be therein named a full and complete transcript of the record and proceedings in the case numbered and entitled on said United States Circuit Court of Appeals' docket No. 8059, *Interstate Commerce Commission, Plaintiff-Appellee*, v. *Keeshin Motor Express Co., Inc., a corporation, Defendant-Appellant*, and that the decision of said United States Circuit Court of Appeals affirming the order and decree of the District Court of the United States, Northern District of Illinois, Eastern Division, as entered by said District Court of the United States in said case, be modified and reversed insofar as it has to do with the transportation of property by motor vehicle in interstate or foreign commerce over petitioner's lines and routes and

on public highways between places in any state through another state other than between places in the State of Illinois through another state, and that your petitioner have such other and further relief in the premises as to your Honorable Court may seem proper.

LUTHER M. WALTER,
HELEN W. MUNSERT,
2106 Field Building,
Chicago, Illinois,

ZACHARY D. FORD, JR.,
FLOYD F. SHIELDS,
221 West Roosevelt Road,
Chicago, Illinois,
Attorneys for Petitioner.